D.B. INCOME TAX APPEAL NO.95/2007.
Commissioner of Income Tax, Ajmer
Vs.
Smt. Meena Devi Mansinghka
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D.B. INCOME TAX APPEAL NO.96/2007.
Commissioner of Income Tax, Ajmer
Vs.
Smt. Meena Devi Mansinghka
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D.B. INCOME TAX APPEAL NO.97/2007.
Commissioner of Income Tax, Ajmer
Vs.
Smt. Meena Devi Mansinghka
..

Date of Order :: 25th May 2007.

HON'BLE MR. JUSTICE P.B. MAJMUDAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. K.K. Bissa, for the appellant.
...

These three appeals pertain to the assessment years 1995-96, 1996-97 and 1998-99 relating to the same assessee and have been filed against the common order dated 19.08.2005 made by the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur in the batch of appeals involving common issues.

While dealing with the assessment proceedings for the year 1997-98, the Assessing Officer ('the AO') noticed that a house construction at Shastri Nagar, Bhilwara was completed

by the assessee in the financial year 1997-98; the assessee declared total cost of construction at Rs. 8,00,000/- whereas according to the Departmental Valuation Officer's (DVO) Report its cost was Rs.18,13,100/-. On the basis of DVO's Report, the AO added Rs.1,94,972/- in the assessment year 1997-98 and initiated proceedings under Section 147/148 of the Income Tax Act for the assessment years 1995-96, 1996-97 and 1998-99 wherein the assessment order had already been completed.

For the aforesaid three assessment years, the assessee challenged the legality of the re-assessment under Section 147/148 of the Act; and the Tribunal found that admittedly reassessment was done only on the basis of DVO's Report. The Tribunal found proceedings based only on DVO's Report to be invalid ab-initio relying on its earlier view that only on the basis of DVO's Report particularly when the valuation was not referred to by the AO during the relevant assessment years, it cannot be valid basis for formation of “reason to believe”. The Tribunal also noted that DVO's Report suffers from various defects or mistakes and relying on its earlier decision in the case of Smt. Sohan Devi Sodhani decided on 07.02.2005, the Tribunal quashed the reassessment proceedings.

During the course of submissions, it is noticed that the said decision of the Tribunal in Smt. Sohan Devi Sodhani case

has since been affirmed by a Division Bench of this Court in D.B. Income Tax Appeal No.130/2005. We have requisitioned the record of the said IT Appeal No.130/2005 wherein this Court has held,-

> "The Tribunal has clearly found that only basis for reopening the assessment for assessment year 1993-94 and 1996-97 was the report of the Valuation Officer obtained during the assessment year 1997-98. It has also found that Departmental Valuation Officer has valued the construction raised by the assessee on the basis of B.S.R. Rates of 1998. On this premise, the Tribunal has further found that since entire construction was not made in 1998 proposing even number of years from financial year but was made in 1992-93 onwards the BSR rates of 1998 of the cannot form basis of estimate of investment shown in books of accounts by the Assessee for period prior to 1998. There being no other material on the basis of which Assessing Officer could have reason to believe that the assessee has under-disclosed the cost during the relevant assessment years, the formation of belief was founded on no material.
>
> This finding in our opinion, is a finding of fact based on material available with the Tribunal and does not give rise to a question of law. It is obvious that B.S.R. Rates of 1998 can have no relevant bearing on assessment of investment made for financial year relevant to the assessment year 1996-97 and earlier years.
>
> In these circumstances, the formation of belief by the Assessing Officer about the under disclosure of investment in construction of house being founded on no material, the Tribunal was right in holding that the initiation of reassessment proceedings were without jurisdiction."

In the present case too, the Tribunal has found that merely DVO's Report cannot be a ground for formation of reasons to believe for the purpose of re-assessment and the Tribunal has also pointed out that the DVO's Report suffers from various defects and mistakes. There being no material available on record, the Tribunal cannot be said to have erred in finding re-assessment proceedings to be invalid ab-initio.

In the facts and circumstances of the case, we are satisfied with the correctness of the order passed by the learned Tribunal and find no substantial question of law being involved in these appeals.

The appeals are, therefore, dismissed summarily.

(DINESH MAHESHWARI), J. **(P.B. MAJMUDAR), J.**

Mohan/